



•ALERT•

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Waste of polyethylene goods: which Consortium has the right to claim the environmental fee?

Polyethylene goods are among the most widely used plastic materials and, as such, are governed by a special environmental regulation in Italy.

The last paragraph of Article 48, Legislative Decree No. 22 of 5 February 1997, instituting the POLIECO Consortium (see now Article 234, last paragraph, Legislative Decree No. 152 of 3 April 2006 or 'Environmental Code'), provides literally that "*anyone, due to his own activity, holds waste of polyethylene goods is obliged to confer them to the consortium directly or by delivery to entities appointed by the consortium*". The legal provision would seem clear: the entrepreneurs who produce, use, or market polyethylene goods are required to confer, directly or indirectly, the "*polyethylene waste*" to the POLIECO Consortium. The conclusion should be equally easy: the environmental fee aimed to financing the recovery, recycling and disposal of such waste should be paid to the POLIECO Consortium.

However, for years, the National Packaging Consortium (CONAI) has been claiming its competence in the matter, stating that polyethylene goods – such as bins, nets, boxes, pallets, and films (adhesives, multilayers, shrink wrappers, etc.) – should be qualified as 'packaging'; thus, the CONAI Consortium, not the POLIECO one, would have the right to claim and collect the environmental fee.



Uncertainties arise from the legal definition of "packaging" under Article 218, Legislative Decree 152/2006, which is unclear and excessively broad. Difficulties in interpreting this notion are further aggravated by opposite trends in the Italian case-law. According to some decisions, "packaging" would be any product designed "*to contain certain goods, from raw materials to finished products, to protect them, to allow their handling and their delivery by the producer to the consumer or user, to ensure their presentation*"; which leads to the paradoxical result of considering as packaging goods that are not (for example, just because they are in principle suitable to "contain" or "present" products). Other decisions, however, exclude that polyethylene goods fall within the scope of "packaging" when they are durable, or are used within a production process to be instrumental, if not constitutive, of other manufactured products.

Recently the CONAI Consortium has launched an increasingly aggressive campaign, coming to request companies that produce or use polyethylene goods not to pay environmental fees to the POLIECO Consortium.

The practical consequences of the question are not irrelevant; some estimates show that the CONAI environmental fee can be 16-20 times higher than that normally paid to the POLIECO Consortium. The impact on business costs is self-explanatory.

It should also be reminded that "producers" of polyethylene goods are first entitled to determine who must be paid the environmental fee; the "users", instead, have just to pay the fee established and shown on the invoices by the producers. The situation of companies that use considerable quantities of polyethylene goods in production cycles is therefore even more difficult and they are now exposed to claims by one or the other Consortium.

LCA Studio Legale is at the very forefront in assisting companies affected by these problems and can provide a specialized legal advice to prevent, as well as to manage, any claim or litigation case.

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